KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, DC 20007

(202) 342-8400

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

JOHN J. HEITMANN
DIRECT LINE:(202) 342-8544
EMAIL:jheitmann@kelleydrye.com

May 4, 2018

BY ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **National Lifeline Association Notice of Oral *Ex Parte* Presentation, WC Docket Nos. 17-287, 11-42 and 09-197**

Dear Ms. Dortch:

On May 2, 2018, Maheen Cook, General Counsel of the National Lifeline Association (NaLA), and John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP met with Jessica Campbell, Rashann Duvall, Nathan Eagan, Jodie Griffin, Trent Harkrader, Allison Jones, and Michelle Schaefer of the Wireline Competition Bureau, to discuss the recent and proposed changes to the Lifeline program in the above-referenced proceedings.[1] The discussion was consistent with the comments and reply comments filed by the National Lifeline Association on February 21, 2018 and March 23, 2018.[2]

In the meeting we discussed the nearly complete lack of support in the record for the proposal to ban resellers from the Lifeline program. The proposal was opposed by CTIA, USTelecom, Verizon, Sprint, NARUC and several states individually, NASUCA, Citizens Against Government Waste, Veterans and Seniors organizations, and scores of other

---

[1] *See Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017).

[2] *See* Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Feb. 21, 2018); Reply Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Mar. 23, 2018).

commenters. The consensus is that the reseller ban would not bridge the digital divide by spurring additional facilities deployment or more affordable services, as confirmed by Dr. John Mayo in his economic analysis provided as a Declaration to CTIA's comments.[3] The commenters agree that the reseller ban would harm consumers by forcing more than 7 million or roughly 70 percent of all Lifeline subscribers to find a new Lifeline service provider (including about 1.3 million veterans), and in some cases, leaving consumers with no wireless or wireline service options. Many commenters explained that the reseller ban would upend the states' role in designating eligible telecommunications carriers (ETCs), as well as the reliance interests of wireless resellers who have willingly sought such designations and landline providers who have been relieved of the obligation to provide Lifeline based on the presence of and consumers' preference for the mobile voice and broadband services offered by wireless resellers. Further, imposing a facilities requirement would depart from a decade worth of precedents in which the Commission has concluded that Section 10 of the Communications Act requires forbearance from the facilities requirement for Lifeline ETCs.

We also noted that the record is nearly unanimous in joining NaLA in its support for more measured approaches to bolstering program integrity and weeding out any remaining waste, fraud and abuse in the program. Most importantly this includes standing up the National Verifier as quickly as possible. Unfortunately the Commission's recent decision not to develop and implement an API for the National Verifier is wasteful and unnecessarily burdensome for consumers, USAC and ETCs.[4] In addition, the Commission should consider conduct based standards and agent registration requirements as an additional or interim means to encourage high levels of compliance and deter bad actors.

Beyond the proposed reseller ban, we also discussed the fact that there are a number of troubling proposals in the NPRM that could effectively eviscerate the Lifeline program's ability to address the affordability aspect of the digital divide. First, the proposal to require wireless resellers to pass-through to their underlying carrier the full amount of the $9.25 subsidy would **eliminate wireless resellers** from the program, as there would be no revenue left to support the

---

[3] *See* Comments of CTIA, WC Docket Nos. 17-287, 11-42 and 09-197, Declaration of Dr. John Mayo (Feb. 21, 2018).

[4] Without an API: (a) USAC will need to screen 100 percent of all applicants, rather than avoiding a substantial portion of these costs by taking advantage of ETC screening tools; (b) consumers will be forced to enter personal information twice creating a substantial burden and barrier to participation as well as potential data integrity issues which will further increase costs by forcing manual USAC review of exceptions and higher call center volumes; and (c) ETCs will be unable to offer online enrollment, making it more difficult and costly to enroll eligible subscribers, especially in rural areas.

product and services. After the full amount of the discount is applied to the services and reimbursed, the Commission should not attempt to regulate beyond that transaction as doing so would impede the market by eliminating ETCs' ability to invest in services and facilities and to provide a reasonable return to investors.

Second, rather than perpetuating the paternalistic mandatory family-sized service plans and phase-out and elimination of support for voice services, the Commission should allow consumers to choose among options of voice and data, including bundles, that strike the best balance between affordability and access for the consumer. Support for voice services should be restored everywhere – not just in rural America.

Third, the Commission should reject the proposed maximum discount proposal because it is administratively unworkable. There will always be those who cannot consistently afford to pay even a modest monthly amount and the benefits of developing a system to make monthly payment requirements and collections would fail to outweigh the costs of providing $111 in annual benefits.

Finally, we discussed NaLA's willingness to work with the Commission on the right number and process for a Lifeline program budget. NaLA is one of the few commenters to acknowledge that the Lifeline program could benefit from a self-enforcing budget mechanism. NaLA supports the bi-partisan $2.25 billion budget proposal endorsed by NARUC. However, it should operate on an annual basis with prospective impact only and should not prioritize qualified and eligible subscribers in some areas of the country over others.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,

John J. Heitmann
Joshua Guyan
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400

Counsel to the National Lifeline Association

cc: Jessica Campbell
Rashann Duvall
Nathan Eagan
Jodie Griffin
Trent Harkrader
Allison Jones
Michelle Schaefer